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 COMMONWEALTH OF PENNSYLVANIA
 PENNSYLVANIA PUBLIC UTILITY COMMISSION
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March 29, 1996

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FCC BUREAU

Office of the Secretary
 Federal Communications Commission
 1919 M Street, N.W.
 Room 408A
 Washington, D.C. 20554

Re: Notice of Proposed Rulemaking Re: Implementation of
 the Telecommunications Act of 1996, CS Docket No. 96-
46, CC Docket No. 87-266(Terminated): Open Video
 Systems; Comments of the Pennsylvania Public Utility
 Commission

Dear Secretary Caton:

Enclosed Please find an original and nine copies of the
 comments of the Pennsylvania Public Utility Commission with regard to
 the Notice of Proposed Rulemaking at the above listed dockets.
 Copies have been provided for service upon each of the Commissioners.

Very truly yours,

John A. Levin
 Assistant Counsel

Counsel for the Pennsylvania
 Public Utility Commission

cc: Mr. Larry Walke, FCC Cable Services Bureau
 International Transcription Services, Inc.

Enclosures

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BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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APR 1 1996
FCC

In the Matter of Notice : Docket Nos. FCC 96-99,
of Proposed Rulemaking : CS Docket No. 96-46,
Re: Implementation of the : CC Docket No. 87-266
Telecommunications Act of 1996 : (Terminated)
(Open Video Systems) :

COMMENTS OF THE PENNSYLVANIA PUBLIC
UTILITY COMMISSION

Pursuant to the Federal Communication Commission's ("FCC") Notice of Proposed Rulemaking adopted and released March 11, 1996 ("NPRM"), the Pennsylvania Public Utility Commission ("PaPUC") herewith offers its comments in the above docket.

Summary

It is clear, both from the legislative history of the Telecommunications Act of 1996 and from recent industry announcements, that the Open Video Systems ("OVS") platform will be a major element of the national information infrastructure and will, to some extent, supplant existing methods of communications and commerce. That being the case, the FCC should strive to draft rules which foster this new technology, and protect the public interest and competitive interests in equal access and

openness of the new medium to both local and national content. This should be accomplished by expressly enforcing the PEG and local content rules prescribed by the Act.

Additionally, since OVS is not a technology, but a set of technologies in continuous development, the FCC should assure that it be developed and provided in a manner that protects the safety, security and settled expectations of privacy of all users of the system. Any development or provision of OVS should include provisions preventing the unauthorized access, use or sale of customer proprietary information without the informed consent of the customer.

The FCC should ensure that the utility of the system should be enhanced by the availability of strong encryption for point to point or similar uses of OVS. Since one of the primary uses of high speed point to point service is likely to be telecommuting, videoconferencing and similar applications, security of such communications in a digitally networked environment is of profound importance. Without reliably secure communications, one of the fundamental benefits of the Telecommunications Act of 1996 will be unrealized.

The FCC should also require telecommunications providers subject to the provisions of Subpart I, 47 C.F.R. §§ 64.901-904 to have completed necessary revisions to their cost allocation manuals before launching OVS enterprises. Reliance upon "special

studies" or summary analysis would place an impossible burden upon the FCC and state regulators entrusted with the continuing duty to prescribe rates for wireline communications.

Comments

INTRODUCTION

OVS is not a technology, but a set of technologies, both existing and in development. While the major wireline players have a vision of what OVS will look like, that may or may not come to pass, given the past history of the development of information technology. OVS has some characteristics of broadcast media, but may also come to resemble pointcast media such as the World Wide Web, and as yet largely unrealized point-to-point communications media applications such as video conferencing and telecommuting. Congress has decreed that OVS will be offered on an open access basis, and has opened up OVS to participation by a wide variety of Video Information Providers ("VIPs"). However, the current emphasis on provision and sale of information in video format, such as movies, is misleading and trivializes the potential of OVS. Since it appears likely that OVS will eventually be provided through switched digital technology, it will eventually come to look more like a high speed digital network than a cable broadcast service. To realize the full potential of OVS, the FCC must prescribe rules which adequately foster open access and open architecture uses, while preserving public interests in PEG programming, local content, and privacy of customer proprietary network information.

- I. OVS RULES SHOULD FOSTER THE NEW TECHNOLOGY WHILE ENSURING THAT IT IS PROVIDED SUBJECT TO APPROPRIATE OPEN ACCESS, LOCAL

CONTENT AND PEG OBLIGATIONS

Recent customer trials of OVS-like services have followed a somewhat traditional hierarchal switched model in which the wireline telecommunications company provides all programming, and "pointcasts", mainly, entertainment material to subscribers. The 1996 Act envisions a far more complex and interesting model. Recognizing the large bandwidth available from use of current digital technologies, and digital compression of information, Congress has decreed that, in exchange for opening up OVS to use by competing VIPs on an open access basis, OVS providers will be granted much greater freedom with respect to setting of rates and terms of service. All the same, in order to carry out Congress's intent, the FCC must expressly provide guidance to the new industry by formulating new rules which prescribe terms of service "consistent with the public interest, convenience and necessity" Telecommunications Act of 1996, Section 302; §653(a). Congress has made provision of OVS expressly subject to the sections 611, 614 and 615 of the Telecommunications Act. Telecommunications Act of 1996, Section 302; §653(b)(1)(A). The FCC should expressly apply existing regulatory provisions interpreting those sections to OVS service. In addition, the FCC should also ensure that the provision of OVS service is architecturally "open" for new applications that VIPs may wish to offer, using the bandwidth they are entitled to utilize. Currently, prospective OVS providers envision supplying OVS through a "set top box" interface which would provide a wide variety of interactive services and features.

This box would presumably be connected (as cable set top boxes are currently) directly to a television. However, VIPs which may wish to offer new or more sophisticated services than 'movies on demand' may wish to have the ability to interface with subscriber home or business HVAC or other controls, computer systems, or specialized devices, such as interactive game or educational equipment that operates best in a high speed digital communications environment. FCC rules should provide that OVS be provided in such a manner so as not to foreclose such specialized applications.

II. CUSTOMER PROPRIETARY INFORMATION SHOULD BE PROTECTED FROM DISCLOSURE OR SALE WITHOUT CUSTOMER AUTHORIZATION BY OVS CARRIERS OR VIDEO INFORMATION PROVIDERS

Telecommunications Act of 1996, Section 702; §222 provides that

Every telecommunications carrier has a duty to protect the confidentiality of, and relating to, other telecommunications carriers, equipment manufacturers and customers...". It also mandates that "except as required by law or with the approval of the customer, a telecommunications carrier that receives or obtains customer proprietary network information by virtue of its provision of a telecommunications service shall only use such information [in connection with the provision of such service or the publishing of directories].

OVS is expected to generate a high volume of highly sensitive, commercially valuable data regarding OVS customers preferences, habits and interests. Unless OVS is provided subject to express restrictions on the use or marketing of such information by OVS providers or VIPs, one of the fundamental provisions of the new Act will be frustrated and the public interest in privacy will be

substantially harmed. The PaPUC submits that OVS providers should be prohibited from use or resale of such information without customer authorization. In addition, VIPs utilizing the open access provisions of the new Act should also be obligated in their use of OVS bandwidth to provide service subject to such privacy safeguards.

III. THE FCC SHOULD ENSURE THAT POINT TO POINT OR POINTCAST SERVICES ARE ADEQUATELY PROTECTED BY PROVISION OF OR AVAILABILITY OF STRONG ENCRYPTION

OVS may be used for point-to-point communications, teleconferencing, telecommuting and similar applications. Without adequate assurance that the content of such communications are protected from disclosure or use by those not party to the communications, it is unlikely that commercial exploitation of the value of OVS will be fully realized. The best way to do that is by the provision by rule that OVS providers offer strong encryption of such communications, or by requiring that OVS architecture be open to customer encryption of their own communications. This is particularly important in a switched digital network where there is a possibility of unauthorized interception of such communications. This is one means of complying with subsection 706(a) of the Act requiring the FCC to encourage the deployment of advanced telecommunications capability.

IV. WIRELINE PROVIDERS OF OVS SHOULD BE REQUIRED TO APPROPRIATELY MODIFY THEIR COST ALLOCATION MANUAL BEFORE RECEIVING

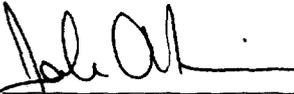
AUTHORIZATION TO PROVIDE OVS SERVICE

In paragraph 70 of the NRPM, you seek comment on what steps local exchange carriers should be required to take with respect to Part 64 cost allocation procedures. The Pennsylvania Public Utility Commission strongly urges the FCC to require OVS applicants, as a prior condition of service, to properly revise their Part 64 cost allocation manuals in order to provide appropriate accounting treatment of OVS costs and revenues. Such revision should take place prior to authorization of an OVS application under the 1996 act. Reliance upon LEC provided ad hoc or ex post facto separations studies by state regulators obligated to regulate LEC rates and tariffs would both impose an intolerable burden, and create a likely risk of inter-jurisdictional separations disputes.

CONCLUSION

For the foregoing reasons, the Commission should issue OVS rules in accordance with the forgoing comments.

Respectfully submitted,



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Dated March 29, 1996